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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/873,881	06/04/2001	Fred W. Scott	18617.NEW	6373

7590  
02/22/2005  
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EXAMINER

SCHEINER, LAURIE A

ART UNIT	PAPER NUMBER
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1648

DATE MAILED: 02/22/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

09/873,881

Applicant(s)

SCOTT ET AL.

Examiner

Laurie A. Scheiner

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 29 October 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-12 is/are pending in the application.
- 4a) Of the above claim(s) 6 and 7 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-5 and 8-12 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 04 June 2001 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |   |   |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)  | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>01/02/02</u> . | 6) <input type="checkbox"/> Other: _____  |

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## **DETAILED ACTION**

### ***Priority***

Applicants intend to rely on the filing date of the prior application under 35 U.S.C. 120 for purposes of excluding prior art. However, application 07/726,609 fails to provide adequate support under 35 U.S.C. 112 for claims 1-5 and 8-12 of this application.

### ***Information Disclosure Statement***

The information disclosure statement filed on January 2, 2002 has been considered. An initialed copy is enclosed.

### ***Election/Restrictions***

Applicant's election without traverse of claims 1-5 and 8-11 on April 1, 2004 is acknowledged. As requested by applicants, the examiner will also include claim 12 with the elected group. The requirement is made FINAL.

Claims 6 and 7 are withdrawn from further consideration pursuant to 37 CFR 1.142(b),

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

Claims 1-5 and 8-12 are rejected under 35 U.S.C. 102(e) as being anticipated by Wasmoen et al (US Patent 5,770,211).

Wasmoen et al. teach a recombinant raccoon poxvirus that expresses the nucleocapsid and transmembrane proteins of feline infectious peritonitis virus; the recombinant viruses are

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useful as vaccines. Wasmoen et al's claims are essentially drawn to a recombinant raccoon poxvirus having a disruption of the thymidine kinase gene for heterologous genes insertion.

Applicant's arguments filed on 10/29/04 have been fully considered but they are not persuasive. The declaration (consisting of a copy of the specification of 07/726,609) filed on 10/29/04 fails in supporting statements made by applicants. The disclosure of application Serial No. 07/726,609 fails to support the expression of more than one exogenous gene inserted into the thymidine kinase gene of the raccoon poxvirus genome. Applicants point to page 15, at lines 25-28 of application 07/726,609, however, that which is set forth has been misrepresented and taken out of context in the argument section of the amendment. The specification, at page 15, lines 25-28, merely states that "the infectious raccoon poxvirus for expressing an exogenous gene from a second viral source." In context, it is clear that "a second viral source" means nothing more than some other unknown viral gene may replace the disclosed and claimed VP2 gene insert; not that the gene expressing VP2 and another unknown viral gene are arranged in tandem within the TK gene. The parent specification is wholly deficient in support of the concept now claimed. The prior specification also clearly fails to support the instantly claimed exogenous genes such as FELV Env, FIV Env, FIPV M, FIPV N, FCV capsid protein, and rabies-G. Thus, the specification of application 07/726,609 fails to support more than one exogenous gene inserted into the thymidine kinase gene of the raccoon poxvirus genome, and is limited to the expression of FPV VP2. The specification of application Serial No. 07/726,609 is neither enabled nor entitled to a multivalent recombinant raccoon poxvirus that contains more than one exogenous gene as set forth by the Markush group of instant claims 2 and 9.

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event,

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however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

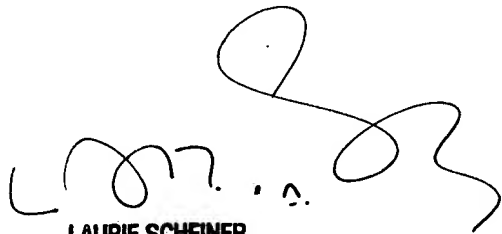
**Conclusion**

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Laurie Scheiner, whose telephone number is (571) 272-0910. Due to a flexible work schedule, the examiner's hours typically vary each day. However, the examiner can normally be reached Monday thru Friday. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, James Housel, can be reached on (571) 272-0902. Any inquiry of a general nature or relating to the status of this application should be directed to the Group 1600 receptionist whose telephone number is (571) 272-1600.

Correspondence related to this application may be submitted to Group 1600 by facsimile transmission. The faxing of such papers must conform with the notice published in the Official Gazette, 1096 OG 30 (November 15, 1989). The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

  
Laurie Scheiner/LAS  
February 9, 2005

  
LAURIE SCHEINER  
PRIMARY EXAMINER